



06 FEB 2008

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| In re Application of SERVANT et al | : | |
| U.S. Application No.: 10/563,758 | : | |
| PCT Application No.: PCT/US2004/021853 | : | |
| Int. Filing Date: 09 July 2004 | : | COMMUNICATION |
| Priority Date Claimed: 10 July 2003 | : | |
| Attorney Docket No.: 54315US | : | |
| For: IMPROVED ELECTROPHYSIOLOGICAL | : | |
| ASSAYS | : | |

This is in response to applicant's "Response to Notification of Defective Response" filed 08 October 2007.

BACKGROUND

On 09 July 2004, applicant filed international application PCT/US2004/021853, which claimed priority of an earlier United States application filed 10 July 2003. The thirty-month period for paying the basic national fee in the United States expired on 10 January 2006.

On 09 January 2006, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 07 May 2007, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 09 July 2007, applicant filed an executed declaration.

On 24 September 2007, the DO/EO/US mailed a Notification of Defective Response (Form PCT/DO/EO/916), which indicated that inventive entity listed on the declaration filed 09 July 2007 differs from that listed on the international application.

On 08 October 2007, applicant filed the present response.

DISCUSSION

The present response states that the sixth inventor was inadvertently omitted from the international application.

MPEP 1893.01(e) states in relevant part,

The inventorship of an international application entering the national stage under 35 U.S.C. 371 is that inventorship set forth in the international application, which includes any changes effected under PCT Rule 92bis. See 37 CFR 1.41(a)(4). Accordingly, an oath or declaration that names an inventive entity different than that set forth in the international application will not be accepted for purposes of entering the U.S. national phase unless the requirements under 37 CFR 1.497(d) are satisfied. These requirements include: (A) a statement from each person being added as an inventor and from each person being deleted as an inventor that any error in inventorship in the international application occurred without deceptive intention on his or her part; (B) the processing fee set forth in 37 CFR 1.17(i); and (C) the written consent of the assignee if an assignment has been executed by any of the original named inventors (see 37 CFR 3.73(b)).

The present response fails to include items (A) and (C) above. The Notification of Defective Response mailed 24 September 2007 set a one month, non-extendable time limit for the filing of a proper reply. Because the present response does not fully remedy the deficiency identified in the Notification of Defective Response and because the period for response set by the Notification of Missing Requirements mailed 07 May 2007 has lapsed, the present application is abandoned.

It is further noted that the declaration filed 09 July 2007 is an improper composite document. In particular, the declaration consists of one each of pages 1-3 and two of page 4. It is not acceptable to combine pages (e.g. signature pages) from different copies of a declaration into a single document. A proper declaration submission would comprise either: (1) a single complete declaration which is presented to and executed by all of the inventors or (2) multiple complete declarations, wherein all of the inventors execute at least one of the multiple complete declarations.

CONCLUSION

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision, including preparation and mailing of a Notification of Abandonment (Form PCT/DO/EO/909), which should indicate that

the application is abandoned for failure to timely file a proper reply to the Notification of Defective Response mailed 24 September 2007.

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